

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DHANNIELL AQUINO,	)	
	)	
Plaintiff,	)	Civil Action No. 09-234J
	)	
v.	)	Judge Gibson
	)	Magistrate Judge Bissoon
MAUHAMMAD NAJI, M.D., <i>et al.</i> ,	)	
	)	
Defendants.	)	

**MEMORANDUM ORDER**

Plaintiff Dhanniell Aquino is a former state prisoner who has filed a civil rights action pursuant to the provisions of 42 U.S.C. § 1983. This case was referred to United States Magistrate Judge Cathy Bissoon for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.C and 72.D of the Local Rules for Magistrates.

On August 31, 2011, the magistrate judge issued a report and recommendation (Doc. 62), recommending that the motion to summary judgment filed by Defendants Naji and McCliment (Doc. 56) be granted. The magistrate judge further recommended that Plaintiff's motion to oppose Defendant's [sic] motion for summary judgment (Doc. 60) be denied. The parties were allowed until September 14, 2011, to file objections. As of the date of this writing, no objections have been filed.

It is noted that John and Jane Doe Defendants still exist on the docket. Allegations against these Defendants were limited to a brief statement in the initial complaint that unnamed individuals "refused to look into [the] situation" regarding Plaintiff's desire for nasal surgery. (Doc. 1) at 4. Plaintiff has conceded that the Defendants to this case who are not medical

professionals cannot be held liable for denial of medical care under the facts that he has alleged. See (Doc. 31) at 2. Additionally, the John and Jane Doe Defendants are not mentioned anywhere in the amended complaint, (Doc. 30), and there is no indication on the record that Plaintiff has ever attempted to name them.

Given the lack of allegations against the John and Jane Doe Defendants, it is apparent that Plaintiff has not stated a facially-plausible claim against them. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). Additionally, given the finding of this Court that Plaintiff has suffered no Eighth Amendment violation, it is clear that leave to amend would be futile. See Fletcher-Harlee Corp. v. Pote Concrete Contractors, Inc., 482 F.3d 247, 251 (3d Cir. 2007). Accordingly, the John and Jane Doe Defendants will be dismissed, with prejudice.<sup>1</sup>

After *de novo* review of the pleadings and documents in the case, together with the report and recommendation (Doc. 62), the following ORDER is entered:

AND NOW, this 27<sup>th</sup> day of September, 2011,

IT IS HEREBY ORDERED that Defendants' motion for summary judgment (Doc. 56) is GRANTED.

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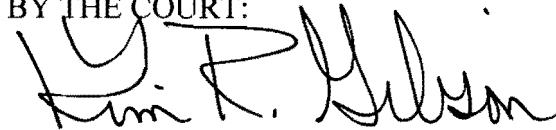
<sup>1</sup> 28 U.S.C. § 1915 requires the federal courts to review complaints filed by persons that are proceeding IFP and to dismiss, at any time, any action that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). Thus, a court must dismiss, *sua sponte*, a complaint that lacks arguable merit in fact or law. Stackhouse v. Crocker, 266 F.App'x 189, 190 (3d Cir. 2008) (citing Neitzke v. Williams, 490 U.S. 319, 325 (1989)). The standard for reviewing a complaint under this section 1915(e)(2)(B) is the same as that for determining a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. See Tourscher v. McCullough, 184 F.3d 236, 240 (3d Cir. 1999); see also Banks v. Mozingo, No. 08-004, 2009 WL 497572, at \*6 (W.D. Pa. Feb. 26, 2009) (Cercione, J.).

IT IS FURTHER ORDERED that Plaintiff's motion to oppose Defendant's [sic] motion for summary judgment (Doc. 60) is DENIED.

IT IS FURTHER ORDERED that the John and Jane Doe Defendants are DISMISSED, with prejudice.

IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Bissoon (Doc. 62), as amended by this order, is adopted as the opinion of this Court.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson", written over a horizontal line.

KIM R. GIBSON

UNITED STATES DISTRICT JUDGE

cc:

**DHANNIELL AQUINO**

245 Emerald Street

Harrisburg, PA 17110